

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE ESTATE OF MICHAEL JOHN MORDEN,
Plaintiff,

CIVIL ACTION NO. 04-60264

vs.

HONORABLE MARIANNE O. BATTANI
HONORABLE STEVEN D. PEPE

FLUKE CORPORATION, ET AL.,
Defendant(s).

**ORDER GRANTING DEFENDANT'S MOTION FOR LEAVE TO FILE A NOTICE OF NON-PARTY
FAULT (DKT.#17), AND DENYING DEFENDANT'S MOTION TO DEEM ADMITTED, OR COMPEL
RESPONSES (DKT. #19)**

Fluke Corporation filed a motion for leave to file a notice of non-party fault on August 17, 2005, and a motion to deem admitted certain facts sought to be admitted, or compel responses on August 29, 2005. Plaintiff did not respond to either motion. These matters were referred to the undersigned for determination pursuant to 28 U.S.C. § 636(b)(1)(A). Given the nature of the matters involved, IT IS ORDERED that these motions will be determined on the briefs without oral hearing pursuant to L.R. 7.1(e)(2)

Defendants wish to file a notice of non-party fault concerning the Defendants in a former suit by Plaintiff, that eventually settled, regarding the same accident. Under MCL § 600 2957, a Defendant may file a notice of non-party fault.

In an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, the liability of each person shall be allocated under this section by the trier of fact and, subject to section 6304, in direct proportion to the person's percentage of fault. In assessing percentages of fault under this subsection, the trier of fact shall consider the fault of each person, regardless of whether the person is, or could have been, named as a party to the action.

MCL § 600 2957.

Fluke Corporation is entitled to have the jury consider its and any other's percentage of fault in its assessment of percentage of fault, and thus Fluke Corporation may file its notice of non-party fault as requested.

The Defendants also ask the undersigned to require the Plaintiff to produce further facts and documents to support their denials of Defendants' Requests for Admissions or alternatively if the Plaintiff has no further facts and documents to produce to support its denials, have the denials deemed admitted. Under FRCP 36, an answering party must make a good faith effort to either admit or deny the matter in question and if asked, explain the reasons for denial. If the answering party does not make a good faith effort in its denial of the matter in question, the Court may "order that the matter is admitted or that an amended answer be served." FRCP 36.

Plaintiff responded to all six of the Defendant's requests for admissions, interrogatories, and their request for documents. The denials of the Plaintiff are sufficient for Rule 36 purposes and therefore there is no need for the Court to compel any further responses. Discovery is open until March 1, 2006, and therefore Defendant has ample time to make other requests if necessary.

Defendant's Motion for Leave to File a Notice of Non-Party Fault (Dkt. # 17) is GRANTED, Defendant's Motion to Deem Admitted, or Compel Responses (Dkt. # 19) is DENIED.

SO ORDERED.

Dated: September 26, 2005
Ann Arbor, Michigan

s/Steven D. Pepe
United States Magistrate Judge

Certificate of Service

I hereby certify that copies of this Order were served upon the attorneys of record by electronic means or U. S. Mail on September 26, 2005.

s/William J. Barkholz
Courtroom Deputy Clerk